

Appl. No. : 10/025,310 Patents Cited  
Amdt. dated Jan 24, 2006  
Reply to the Office Action of Nov 2, 2005

**U.S. PATENT DOCUMENTS CITED in the SPECIFICATION:**

U.S. Patent No. 3,629,600: EMERGENCY TRAFFIC LIGHT CONTROLLER

U.S. Patent No. 3,933,354: REFLEX TESTING AMUSEMENT DEVICE

U.S. Patent No. 4,702,475: SPORTS TECHNIQUE AND REACTION TRAINING  
SYSTEM

U.S. Patent No. 5,325,340: PACING DEVICE

U.S. Patent No. 5,812,239: METHOD AND ARRANGEMENT FOR THE  
ENHANCEMENT OF VISION AND/OR HAND-EYE COORDINATION

U.S. Patent No. 5,897,457: ATHLETIC PERFORMANCE MONITORING SYSTEM.

U.S. Patent No. 6,066,105: REFLEX TESTER AND METHOD FOR MEASUREMENT

U.S. Patent No. 6,278,378 B1: PERFORMANCE AND ENTERTAINMENT DEVICE  
AND METHOD OF USING THE SAME

**U.S. PATENT DOCUMENTS CITED in the REMARKS:**

U.S. Patent No. 4,632,570: SPORT TIME USED FOR INTERVAL TRAINING

U.S. Patent No. 5,469,342: LIGHT-STRIP APPARATUS.

U.S. Patent No. 5,921,896: EXERCISE DEVICE

Canadian Patent 2169969: A REMOTE CONTROLLED SIGNAL CONE FOR SPORTS  
TRAINING WITH LIGHT AND AUDIBLE ALARM ACTIVATED BY  
WIRELESS REMOTE CONTROL.

German Patent 21409045: A COMPACT PORTABLE TRAFFIC-HAZARD WARNING  
INDICATOR COMPRISING BATTERY OPERATED LIGHT-EMITTING  
CONE OF TRANSPARENT MATERIAL FOR UNIVERSAL USE.

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1. This response to the Final Office Action of November 2, 2005 is accompanied by a signed RCE transmittal and fee payment.
2. The examiner objected to **Claims 47-49** under 35 USC 112 that each of these claims lacked sufficient antecedent basis for the stated limitation. In the amended claims on **page 3** the article "the" has been replaced with "a" or "an". Additionally in claim 47 the term "a transition" is expanded to "a transition to another device state".
3. The examiner did not object to **Claim 46** on the same grounds as **Claims 47-49**. However since the grammatical structure of that claim is the same as those which were objected to, the applicant has also amended **Claim 46** on **page 3** in the same manner as the for **Claims 47-49**.
4. The examiner rejected under 35 USC 102(b) various claims as being anticipated by Elstein et al. (US 4,702,475). These issues are discussed on a claim by claim basis in the following paragraphs.
5. The examiner rejected **Claim 37** as being unpatentable over Elstein under 35 USC 102(b), however the applicant submits that the device of the present application differs substantially from that of Elstein both in its intended usage and in its implementation. The major differences are: **1)** the device of Elstein is a reaction training device used to indicate which discrete action an athlete is to perform in response to its signals (Abstract), each such action having a "start" and an "end" (Abstract), whereas the device of the present application is freely running and the

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signals it produces do not indicate the start or end of a discrete activity but rather changes in the athletic environment to which the athlete responds during an activity;

2) the device of Elstein is solely a training device, whereas the device of the present application is also designed to be used during an athletic game or contest, and so consequently is freely running, signals omnidirectionally, and requires no user interaction once it has been configured and turned on ; 3) the device of Elstein contains a required element which emits a distinct signal to indicate the end of each activity (Abstract, 4:5-12), whereas the device of the present application lacks this element as it does not produce an “end” signal since its states do not indicate a discrete activity that “begins” and “ends”; 4) the device of Elstein incorporates a required trigger element that initiates the training drill (8:34-37, 9:14-20, 10:29-32), whereas the device of the present application has no need for this element and so omits it; 5) some implementations of the device of Elstein contain one or more required trigger elements that time the response of the athlete to that signal (Abstract, 10:29-32, 12:12-17), whereas the device of the present application omits this element as for its intended use there are no discrete reactions to time; 6) the device of Elstein implements a “pause” period (3:65-67, 12:67-68) following the “end” signal to allow the athlete to reposition on the field back to a start position, whereas the device of the present application neither implements nor requires such a “pause” since its states do not indicate a discrete activity that “begins” or “ends”; 7) the device of Elstein uses a fixed duration (Abstract, 10:63-65, 13:1-9) for each state in a drill, whereas the

device of the present application can randomly vary the duration of each state; and 8) the randomness produced by the device of Elstein subsequent to the initial trigger (23:48-57) is weak and so an athlete who ran the same drill repeatedly would eventually be able to predict with some accuracy the next state based upon those that preceded it [this is most evident for a drill with a simple pattern like 123456123456, but the principal applies for all fixed patterns with random starts], as well as the exact time the next signal would appear [since the current state completely determines that], whereas the order and duration of states presented by the device of the present application is randomly selected at each transition to the next state, and so is unpredictable from observations of the preceding states. **In summary**, the device of Elstein is used for a different purpose than the device of the present application, consequently it functions in a different manner and utilizes additional elements (the audible “end” indicator, the drill initiator trigger, and in some implementations timing triggers) which are not present in the device of the present application. Additionally the randomness produced by the device of the present application is superior to that of the device of Elstein, as both the order and the timing of device states may be randomized and are truly unpredictable. Therefore, the applicant submits that **Claim 37** is valid.

6. Furthermore, with respect to **Claim 37**, it is important to recognize that prior art cited by the present and previous examiners falls into two general classes: reaction training devices (as in Elstein) and interval training devices (as in Karrenberg). The novel

device of the present application is new and belongs to neither of these device classes.

The device of the present application introduces continuous variation into the training of athletes and the playing of athletic games. **Claim 37** has been amended by the addition of the word “continuously” in its final clause on **Page 2**. This further serves to distinguish the device of the present claim from reaction training devices as exemplified by Elstein which allow time for the athlete to return to a starting position and so cannot be said to introduce variation continuously. Therefore the applicant submits that **Claim 37** is valid.

7. Furthermore, with respect to **Claim 37**, consider the specific use of the device of Elstein and the device of the present application in a soccer dribbling exercise where each can indicate “pass on the right”, “pass on the left”, “pass on either side”, “do not pass”. Elstein teaches that the player would begin at a starting position (8:31-33, 9:21-23), a trigger would be activated (the types vary: 8:34-37, 9:14-20, 10:29-32, etc.), at which point the device would indicate a single activity (for instance “pass on the right”). Subsequently that state would be maintained long enough for the athlete to complete the single task (13:1-9) of dribbling around the cone to the right, at which point a second signal (3:19-25, 4:5-13) would be emitted to tell the athlete that the current task had ended. There would then be a pause interval (3:65-67, 12:67-68, 14:34-38) allowing the athlete to move back to the starting position. In some implementations the time it took the athlete to complete this single task would be measured directly (5:12-24). The device of the present application is used quite

differently. As the athlete approaches the cone it continuously transitions between the four states in random order and with varying duration in each state. These signals simulate the motions and feints of an opposing player. There is no “start”, no “end”, no extra signal to indicate “end”, no “pause before the next activity”, and no triggers are employed. Therefore, the applicant submits that **Claim 37** is valid.

8. Furthermore, with respect to **Claim 37**, “said second signal being distinguishable from the first signal” (**Page 2**) is not qualified in any way, it means exactly what it says, that the two signals are always distinguishable during use of the device of the present application. As described in subsequent dependent claims this may be accomplished by making the signals omnidirectional (rings on a cone) and color coded. It is important that both signals always be distinguishable because the device of the present application is freely running and so the athlete must be able to catch both signals at all times during its use. Conversely, in the device of Elstein the state signal need only be recognized by the athlete from the “start position” at the start of a reaction, as this signal will not change during that reaction and so need not be seen again. Therefore, the applicant submits that **Claim 37** is valid.

9. The examiner objected to **Claim 38** under 35 USC 102 that both the device of Elstein and the device of the present application are made of durable materials appropriate for an athletic activity. However the applicant submits that since **Claim 38** modifies **Claim 37**, which describes a device that differs in both function and required elements from the device of Elstein, that **Claim 38** is valid.

10. The examiner objected to **Claim 38** under 35 USC 102 that the device of Elstein is used in the playing of athletic activities. The device of Elstein is solely a reaction training device. Conversely, the present device is designed to be used both in training and in the actual playing of athletic games, that is, to be present on the field during a contest. This is noted in **Claim 37**, which **Claim 38** modifies, therefore the applicant submits that **Claim 38** is valid.
11. The examiner objected to **Claim 44** under 35 USC 102 that both the device of Elstein and the device of the present application utilize microprocessors. However the applicant submits that since **Claim 44** modifies **Claim 37**, which describes a device that differs in both function and required elements from the device of Elstein, that **Claim 44** is valid.
12. The examiner objected to **Claim 45** under 35 USC 102 stating that Elstein discloses that the signals may be emitted in random manner (9:56-68). However the applicant submits that since **Claim 45** modifies **Claim 37**, which describes a device that differs in both function and required elements from the device of Elstein, that **Claim 45** is valid.
13. The examiner objected to **Claim 45** under 35 USC 102 stating that Elstein discloses that "these signals emitted from the lamps can be combinations of lamp signals". However, throughout Elstein teaches exactly the opposite, that only one light at a time is activated (abstract, 3:56-58, 3:65, 4:1, etc). Moreover, basic user interface design principals would be violated by a device which signaled states though all

combinations of 6 discrete lamps, since the resulting 36 combinations would represent a command table too complex for the average player to respond to in real time. The device of Elstein is a reaction training system so Elstein did not burden the athlete with a complex interpretation step before reacting to the command. Elstein's choice of 6 different signal lamps, on the other hand, is consistent with good user interface design since most people can keep that small number of different bits of information in their short term memory, and so respond quickly and appropriately to whichever single lamp is lit.

14. The examiner objected to **Claim 45** under 35 USC 102 stating that Elstein discloses that "these signals emitted from the lamps can be combinations of lamp signals". Elstein mentions this possibility only once at 9:66-68. However that sentence is included in a paragraph where the signals for diagonal motion are indicated by separate lights **118** and **122** and not by the combination of forward/backward (**120/114**) and right/left (**112/116**) lights. The applicant is unsure what Elstein actually meant in the cited sentence since the additional elevation or jumping patterns could not have been initiated in his example by a single lamp (as he suggests) as all 6 lamps in his display in **Fig 4** were already assigned meanings. Moreover, it is obvious to one skilled in the arts, retrospectively based on the teachings of the present application, that had Elstein intended combinational interpretation of his directional signals he could have stated, for instance, that light **118** meant "serve", light **122** meant "jump", and that the pairs of lights **120/114** and **112/116** were to be interpreted



in combination to indicate diagonal motion. This would have provided a flexible way to indicate a complex action such as “serve and then move diagonally to the right towards the net” without adding additional lights to his device, or creating an excessively large command table, since the signals are orthogonal. Yet this concept is not explicitly mentioned in Elstein, nor does Elstein relate any structure for lighting two (or more) specific lamps as part of a training sequence. Therefore the applicant submits that **Claim 45** is valid because the combinatorial use of lights to indicate different signals is not clearly established in Elstein.

15. The examiner objected to **Claim 45** under 35 USC 102 stating that Elstein discloses that the signals may be emitted in random manner (9:56-68). However the device of the present application randomly varies the presentation of the device states not only in order but also in duration. The applicant respectfully submits that **Claim 45** is valid because “an unpredictable sequence” in this instance includes variation in time, whereas that feature is absent in the device of Elstein. Moreover, such a feature is contrary to the intended use of the device of Elstein since it is designed to provide an adequate interval for a specified task to be completed (Timer button in Lamp mode 13:1-9) and for the athlete to move back to the start position (Pause 12:67-68). Shortening the duration interval excessively would make it impossible for the specified task to be completed, shortening pause excessively would make it impossible to return to the starting position, and lengthening either would just waste the athlete’s time before the next activity was indicated.

16. The examiner objected to **Claims 46, 47, and 50** under 35 USC 102 that Elstein discloses a device that can utilize different light patterns and duration periods. However the applicant submits that since these claims modify **Claim 45**, which is itself modifies **Claim 37**, which describes a device that differs in both function and required elements from the device of Elstein, that **Claims 46, 47, and 50** are valid.
17. The examiner objected to **Claims 46, 47, and 50** under 35 USC 102 that Elstein discloses a device that can utilize different light patterns and duration periods. However the time variations provided by the device of Elstein are fundamentally different from those in the device of the present application. The device of Elstein allows the duration and pause for each activity to be set to a fixed value (13:1-9, 13:56-58, 12:67-68). The device of the present application allows the following timing parameters to be controlled: the mean transition frequency between states, the minimum hold time in a state, the average time spent in each state (occupancy). The primary difference which results is that each time a particular signal is emitted by the device of Elstein its duration will be exactly the same, whereas the duration of the signals emitted by the device of the present application will be different in each instance. Therefore the applicant submits that **Claims 46, 47, and 50** are valid because the timing parameters these describe are not utilized in the device of Elstein.
18. The examiner objected to **Claim 48** under 35 USC 102 that Elstein discloses a device that can energize lamps either sequentially or randomly. However the applicant submits that since this claim modifies **Claim 45**, which itself modifies **Claim 37**,

which describes a device that differs in both function and required elements from the device of Elstein, that **Claim 48** is valid.

19. The examiner objected to **Claim 48** under 35 USC 102 that Elstein discloses a device that can energize lamps either sequentially or randomly and cited 9:30-39. However the applicant submits that Elstein actually describes no mechanism for lighting these lamps sequentially. In the cited text it says “sequentially completes the energizing circuits of these lamps” but in the very next sentence says “such lamps will remain in an unlit condition” (until triggered). Effectively in this embodiment of the device of Elstein the initial signal is picked by spinning a sort of electronic roulette wheel, and the initiating trigger determines where that wheel stops. The suggested rate for cyclic switch 134 is 10 KHz (10:52-55), which is appropriate for use with a separate initiation trigger to pick a lamp apparently at random, but not appropriate for actually displaying a sequence of lit lamps. Therefore the applicant submits that **Claim 48** is valid.

20. The examiner objected to **Claim 48** under 35 USC 102 that Elstein discloses a device that can energize lamps either sequentially or randomly and cited 9:30-39. Elstein discloses on 25:3-28 another embodiment which does not use the “roulette wheel” method of the previous remark to pick the initial state, but rather a pseudorandom number generator. The logic controlling the order of the states in this embodiment of the device of Elstein is described in the “03 drill running state routine” (23:48-57). This provides only for random selection of the start state within a drill, followed by

sequential passage through the predefined states listed in the drill program until the end of that list, followed by one or more random restarts at other states within the same drill, until the allowed time for the entire drill (Duration 13:56-58) has expired. It does not seem possible to construct a drill to run on this device so that, for instance, the states 1->6, 1->6 are emitted without at least one random break in the sequence. Therefore the applicant submits that, since the device of Elstein cannot be configured to reliably emit states in sequence, that **Claim 48** is valid.

21. The examiner objected to **Claim 49** under 35 USC 102 that a keypad can be used to input the transition frequencies of the periods of response (4:68-5:11). However the applicant submits that since this claim modifies **Claim 45**, which itself modifies **Claim 37**, which describes a device that differs in both function and required elements from the device of Elstein, that **Claim 49** is valid.
22. The examiner objected to **Claim 49** under 35 USC 102 that a keypad can be used to input the transition frequencies of the periods of response (4:68-5:11). The applicant submits that the device of Elstein has no feature corresponding to "rate of transitions randomly varying around a mean frequency". The timing of transitions in the device of Elstein are fixed by the on time of each lamp (13:1-9) and the pause interval (12:67-68), which themselves do not vary during the device's operation. Conversely, the device of the present application may be configured via the switch of **Claim 49** so that device transitions either occur at a fixed frequency or vary around a mean frequency. That is, in one position of this switch the device of the present application

will go through its device states with a metronome like timing sequence such that it is perfectly predictable when the next state will appear. In the other position of this switch the time of the next transition will vary, and so not be predictable by the athlete. In the device of Elstein once the identity of the current state is known, so will be the time at which the next state will be presented. The athlete will not know this initially, but after some time using the device, and having experienced that lamp 5 is lit exactly 2 seconds each time, will eventually be possible to anticipate exactly when the next signal will be lit whenever lamp 5 is lit. (This is a defect in the device of Elstein since the athlete will begin to anticipate when the next signal will appear, and that will artificially shorten the perceived reaction time.) Therefore, the applicant submits that **Claim 49** is valid since it describes a function not present in the device of Elstein

23. The examiner objected to **Claim 49** under 35 USC 102 that “thus in order for the invention to operate in a random manner then the device would then be operating in a selective manner as well”. It does not appear that the device of Elstein can in fact be programmed via the described interface to guarantee that it will illuminate all of its lights in a fixed and repeating sequence. Most relevantly, there is no keyboard switch analogous to that of **Claim 49** (12:37-14:45). The logic controlling the order of the states in this embodiment of the device of Elstein is described in the “03 drill running state routine” (23:48-57). This provides only for random selection of the start state within a drill, followed by sequential passage through the predefined states listed in

the drill program until the end of that list, followed by one or more random restarts at other states within the same drill, until the allowed time for the entire drill (Duration 13:56-58) has expired. It does not seem possible to construct a drill to run on this device so that, for instance, the states 1->6, 1->6 are emitted without at least one random break in the sequence. Therefore the applicant submits that, since the device of Elstein cannot be configured to reliably emit states in sequence, that **Claim 49** is valid.

24. The examiner objected to **Claim 52** under 35 USC 102 as being unpatentable over Elstein. The numerous differences between the device of Elstein and the device of the present application presented in **Remark 5** above apply here as well and so will not be repeated. **Claim 52 (Pages 4-5)** explicitly differentiates between the device of the present application and the device of Elstein in the following sections: **1)** in (b), “is at least partly random in order or timing”, whereas randomness in timing is not provided by the device of Elstein; **2)** in (c), “said signal is unpredictable by an observer” is true for both order and timing, whereas for the device of Elstein it is (weakly) true for order and not true for timing; **3)** in the whereby clause following (c) “continuously introducing unpredictable variation” distinguishes from the device of Elstein which requires a “return to starting position” pause during which no variation will be introduced, and so the device of Elstein does not variation continuously; **4)** the absence of the required trigger element(s) of the device of Elstein; and **5)** the

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absence of the required “end” signal element of the device of Elstein. Therefore the applicant submits that **Claim 52** is valid.

25. The examiner objected to **Claims 39 and 40** under 35 USC 103 as unpatentable over Elstein and in view of Chein. The applicant submits that these claims modify **Claim 37**, which describes a device that differs in both function and required elements from the device of Elstein. It would not be obvious to one skilled in the arts to extend a reaction training system as described by Elstein so that it functioned as does the device of the present application, as such an extension would render it inoperable for its original purpose. Therefore the applicant submits that **Claims 39 and 40** are valid.

26. The examiner objected to **Claims 39 and 40** under 35 USC 103 as unpatentable over Elstein and in view of Chein because: “the motivation for having the signaling elements disposed upon the surface of the case in rings would be to provide the athlete with a clear view of the signal”. However the device of Elstein requires that the athlete return to the start position following the “end” signal during the “pause” interval. Therefore there would be no reason to extend the device of Elstein to provide omnidirectional viewing since the athlete would always initially view its signal from the same position. Moreover, the signal provided by the device of Elstein does not change during the athlete’s reaction, so the athlete has no need to view the signal once the reaction has begun, especially since the “end” signal is a sound, again, obviating the need for an omnidirectional display. Consequently it does not follow that one skilled in the arts would extend the device of Elstein with an omnidirectional

display. Therefore the applicant submits that **Claims 41 and 43** are not an obvious extension of Elstein.

27. The examiner objected to **Claims 41 and 43** under 35 USC 103 as unpatentable over Elstein and in view of Karrenberg. The applicant submits that these claims modify **Claim 37**, which describes a device that differs in both function and required elements from the devices of Elstein and Karrenberg. It would not be obvious to one skilled in the arts to extend a reaction training system (Elstein) or an interval training system (Karrenberg) so that either functioned as does the device of the present application, as such an extension would render either modified device inoperable for its original purpose. Moreover, simply coloring the lights of the device of Elstein or running it on batteries would not convert it functionally into the device of the present application. Therefore the applicant submits that **Claims 41 and 43** are valid.

28. The examiner objected to **Claims 41** under 35 USC 103 as unpatentable over Elstein and in view of Karrenberg claiming that it would be obvious to one skilled in the arts "to provide signaling lights of different colors." The applicant first would like to clarify exactly why different colored lights are used in the device of the present application. The signal produced by this device is combinatorial. The athlete must be able to distinguish which ring(s) are lit under difficult viewing conditions (at a distance, under poor illumination, and via peripheral vision) or the athlete will not be able to discriminate between the two states having only one lit ring. If the two rings are the same color, and only one is lit, then in order to identify the signal the athlete



must either estimate that ring's distance down from the top of the cone or the relative length of the ring of LEDs as viewed from the side. This problem would be further exacerbated if the training field contained cones of slightly different shapes and sizes, which could easily occur with cones bought at different times and places. By employing colored lights in the rings this problem is eliminated and all 4 signals may be easily determined. Conversely, in the device of Elstein each signal is represented by a single light and the design of the lights (Fig 1, Fig 4), and the "start position" of the athlete (as in Fig 1), ensures that the athlete can readily determine at "start" which light is lit, and so, which signal is present. Since there is no possibility of "signal confusion" in the device of Elstein there exists no reason for one skilled in the arts to extend the device by coloring the lights to eliminate this nonexistent problem.

Moreover, if the lights were colored for some other reason (aesthetics perhaps) doing so would not be sufficient to cause the device of Elstein to function as does the device of the present application. Therefore, the applicant submits that **Claim 41** is valid.

29. The examiner objected to **Claim 42** under 35 USC 103 as unpatentable over Elstein and in view of Boland. The applicant submits that this claim modifies **Claim 37**, which describes a device that differs in both function and required elements from the devices of Elstein and Boland. It would certainly be possible to modify the lights of the device of Elstein to utilize LEDs as in Boland (and many, many other devices), however doing so would not be sufficient to cause the device of Elstein to function as does the device of the present application. In particular, the device of Elstein would

still contain the required “end signal” and initiating “trigger” elements, some implementations would still contain timing “trigger” elements, and it would still not be fully unpredictable in signal order or duration. Therefore, the applicant submits that **Claim 42** is valid.

30. The examiner objected to **Claim 51** under 35 USC 103 as unpatentable over Elstein.

The applicant submits that **Claim 51** modifies **Claims 45** and **37** which describe a device that differs in both function and required elements from the device of Elstein (see **Remark 5**). It would certainly be possible to modify the device of Elstein to utilize different light combinations to represent different signals as implemented in the present application, however doing so would not be sufficient to cause the device of Elstein to function as does the device of the present application. In particular, the device of Elstein would still contain the required “end signal” and initiating “trigger” elements, some implementations would still contain timing “trigger” elements, and it would still not be fully unpredictable in signal order or duration. It would not be obvious to one skilled in the arts to make all of these changes as the resulting device, that of the present application, would no longer function properly for the role intended by Elstein, that of a reaction timer. Therefore, the applicant submits that **Claim 51** is valid.

31. The examiner objected to **Claim 53** under 35 USC 103 as unpatentable over Elstein in view of Boland and further in view of Karrenberg. The arguments of the preceding remark apply here as well. Restating this point once again, the device of the present

application is neither a reaction timing device (Elstein, Boland) nor an interval timing device (Karrenberg), so modifying these devices to function as this one does would render them inoperable for their original intended function. Consequently, it would not be obvious to one skilled in the arts to modify them in this manner. Consequently the applicant submits that **Claim 53** is valid.

32. The examiner considered Kelsey (U.S. Pat No. 4,632,570) as prior art made of record and not relied upon as pertinent to applicant's disclosure. The device of Kelsey is yet another member of the class of interval training devices. It implements timers, displays time remaining, emits audible signals that indicate when to exercise and when to rest, and it provides a method for the duration of these periods to slowly increase. However it cannot perform the function of the device of the present application, which is to introduce variation into athletic training and games. The output of the device of Kelsey is completely predictable and its sole purpose seems to be to relieve the athlete of the need to consult a clock or wristwatch. Therefore the applicant submits that Kelsey introduces no new relevant concepts or elements not listed previously in the prior art.

33. The examiner considered CA 2169969 (in French) as prior art made of record and not relied upon as pertinent to applicant's disclosure. This patent describes a remote controlled signal cone for sports training with light and audible alarm activated by wireless remote control. The applicant's grasp of French is limited but this patent appears to describe just what its title indicates: a cone is remotely controlled by a

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coach or other trainer who tells a player where to go on the field by turning on the cone's light or alarm. This is very different from the device of the present application which randomly generates signals and is not under the active control of another person. Therefore the applicant submits that this patent introduces no new relevant concepts or elements not listed previously in the prior art.

34. The examiner considered DE 2409045 (in German) as prior art made of record and not relied upon as pertinent to applicant's disclosure. A German friend was drafted into reading it and he informed the applicant that it describes conical traffic markers, some of which blink and some of which use omnidirectional lights. There was no mention of states, applications to athletics, randomly varying durations or sequence orders. Conical traffic markers are notoriously common. Therefore the applicant submits that this patent introduces no new relevant concepts or elements not listed previously in the prior art.

35. The examiner did not object to the drawings or specification. No changes to these are entered in this response.

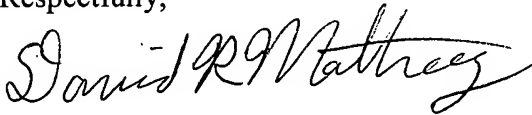
36. No new literature has been referenced by the applicant in the remarks..

37. The applicant submits that the issues noted by the examiner in the Office Action of November 02, 2005 have been resolved. The claims which were in conflict have been modified to be fully compliant with 35 USC 112; all claims have been demonstrated to be fully compliant with 35 USC 102; and all claims have been shown not to be obvious extensions of Elstein and so satisfy the conditions of section 35 USC 103;

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There are major differences between Elstein's device and methods and those of the present application; One skilled in the arts would not obviously extend the teaching of Elstein to encompass the present application as doing so would either eliminate elements required for its original purpose or would introduce concepts outside of the scope of his invention. Accordingly, the applicant submits this amended application in the belief that it is now in full condition for acceptance.

Respectfully,

A handwritten signature in cursive script, reading "David R Mathog". The signature is written in dark ink and is positioned below the word "Respectfully,".

David Mathog  
1215 Greenfield Ave.  
Arcadia, CA 91006  
626/294-0135